

² The Board notes that appellant submitted additional evidence on appeal. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that an incident occurred in the performance of duty on June 22, 2018, as alleged.

FACTUAL HISTORY

On September 22, 2020 appellant, then a 62-year-old former mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 22, 2018 she sustained a head and left eye injury when she struck her head on metal scaffolding while in the performance of duty. On the reverse side of the claim form O.G., an employing establishment supervisor, controverted the claim alleging that she had not reported an injury on June 22, 2018. He further noted that appellant had resigned from her employment on August 28, 2018.

In a June 25, 2018 report, Dr. Mahwash Hirmendi, an emergency medicine specialist, recounted that appellant related a history of waking up the day before with sudden loss of vision in her left eye. He further noted that the vision in her left eye had been deteriorating for the past year, and that she had bumped her head three days prior on a metal beam or bar while at work. Dr. Hirmendi performed a physical examination and found increased ocular pressure on the left and that the left eye could detect only lights and shapes. He noted that ultrasound findings were suggestive of retinal detachment, and computerized tomography (CT) scanning of her head was negative for acute large vessel territory infarct or intracranial hemorrhage. Dr. Hirmendi diagnosed traumatic cataract of the left eye and referred appellant to Dr. Robert Burns, an internal medicine specialist.

In a September 23, 2020 letter, O.G. indicated that the employing establishment had denied the claim and controverted continuation of pay because appellant had not filed a Form CA-1 within 30 days of its occurrence.

In a statement dated September 28, 2020, appellant indicated that on June 25, 2018 she provided the employing establishment management office with medical reports documenting that she struck her head on metal scaffolding while at work.

In a September 29, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP also requested a narrative medical report from appellant's treating physician containing a detailed description of findings and a diagnosis, explaining how her work activities caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to submit the necessary evidence.

Thereafter, OWCP received a January 7, 2019 note indicating that Dr. Burns had referred appellant to Dr. Hau Nguyen, an ophthalmologist, and that she was scheduled to undergo surgery on the left eye on January 10, 2019 by Dr. Nguyen.

By decision dated November 3, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred as

alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

To establish that an injury occurred as alleged the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁹

³ *Supra* note 1.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

⁹ *Betty J. Smith*, 54 ECAB 174 (2002).

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the June 22, 2018 employment incident occurred while in the performance of duty, as alleged.

Appellant indicated in her September 22, 2020 claim form that she struck her head on metal scaffolding while in the performance of duty on June 22, 2018, and within a few days, developed sudden loss of vision in the left eye for which she sought immediate medical care. She related a consistent history regarding the incident and her subsequent treatment in a September 10, 2020 statement. As noted above, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰

Moreover, appellant submitted medical evidence by way of a June 25, 2018 report of Dr. Hirmendi, who noted that she had struck her head at work three days prior on metal scaffolding. At that visit, Dr. Hirmendi examined her left eye and she underwent an ultrasound and CT scanning. The employing establishment controverted appellant's claim solely due to the fact that she did not report the incident on the date of injury. Such a controversion is insufficient to provide persuasive evidence to refute her allegations.¹¹

The Board therefore finds that, based on appellant's statements and the medical evidence of record, she has met her burden of proof to establish that the June 22, 2018 employment incident occurred in the performance of duty, as alleged.¹²

As appellant has established that the June 22, 2018 employment incident occurred as alleged, the question becomes whether this incident caused an injury.¹³ As OWCP found that she did not establish fact of injury, it did not analyze or develop the medical evidence.¹⁴ Thus, the Board will set aside OWCP's November 3, 2020 decision and remand the case for consideration of the medical evidence.¹⁵ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted June 22, 2018 employment incident and any attendant disability.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the June 22, 2018 employment incident occurred in the performance of duty, as alleged. The Board further

¹⁰ S.A., Docket No. 19-1221 (issued June 9, 2020).

¹¹ See M.C., Docket No. 18-1278 (issued March 7, 2019); D.B., 58 ECAB 464, 466-67 (2007).

¹² J.C., Docket No. 18-1803 (issued April 19, 2019); M.C., *id.*; M.M., Docket No. 17-1522 (April 25, 2018).

¹³ C.H., Docket No. 19-1781 (issued November 13, 2020); A.C., Docket No. 18-1567 (issued April 9, 2019).

¹⁴ *Supra* note 8; R.W., Docket No. 11-0362 (issued October 24, 2011).

¹⁵ W.R., Docket No. 17-0287 (issued June 8, 2018); *supra* note 13.

finds that this case is not in posture for decision with regard to whether she has established an injury causally related to the accepted June 22, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: September 14, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board